

BOARD OF ZONING APPEALS
MINUTES
September 26, 2006

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on September 26 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, ERMA MARHAM, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JUSTIN GRAHAM, and JOSHUA BLICK, JAMES RUANE arrived at 1:32pm

Board members absent:

None

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ARBERTHA, Recording Secretary.

FOSTER We have a quorum with five in attendance. We will start the meeting at 1:33pm.

FOSTER First thing on the agenda is to approve the 8/22/06 minutes. I like to suggest that motion on page 4 be used as the standardized motion that the secretary uses and add the idea that I move to approve the variance and conditions. I understand that she will not put in the full read. But it is important that we show people that we understand what the vote is, if you go further back you will find that it was moved without the secretary report read mention. They will know that we understand what we are doing and agreeing on. Is there any more changes request?

GREENLEE So moved

ANTHIMIDES Seconded

FOSTER Motion Approve 7-0

FOSTER (RUANE and BLICK came in shortly after hearing began making it 100% attendance). We have six cases today. We will have staff to make presentations. I will ask the applicants to comment on any of the conditions whether they agree with any of the staff's recommendation on conditions then we will ask if anyone else is here to speak on the case and then we will close hearing and confine the discussion to the board to make a decision. We will now hear from Jess McNeely on BZA2006-59.

McNEELY Good afternoon, I am Jess McNeely and I am here to present BZA2006-00059. **BACKGROUND:** The applicant proposes to renovate an existing 32-unit apartment building at 1140 N Topeka, the 1949 building has an existing 22 parking spaces. Renovation of the building will require compliance with the zoning code, which would require 1.25 parking spaces per unit, or 40 parking spaces. A variance is required to reduce the parking requirement by more than 10 percent. The surrounding area is characterized by a mixture of zoning, many medical office and social service land uses, and some residential land uses. The applicant's site plan is attached.

ADJACENT ZONING AND LAND USE:

NORTH	"TF-3"	Single-family residential
SOUTH	"TF-3", "B"	Medical office
EAST	"TF-3", "B"	Church, single-family residential
WEST	"NO", "B"	Social services, medical office

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It staff's opinion that this property is unique as the apartment building was built in 1949, consuming much of the site, and built prior to current code parking requirements. The property is also unique as a multi-family building in an older, mixed-use neighborhood, where residents can walk to nearby establishments. According to the applicants, many residents of this building do not own cars, and the existing parking has been adequate.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance will not adversely affect the rights of adjacent property owners. The apartment building has operated with 32 units and 22 parking spaces for some time, without complaint from adjacent property owners. Improvements on the site, such as paving the existing parking and alley, will improve traffic flow and its affect on adjacent property owners. Additionally, on-street spaces are available on Topeka if overflow parking should be necessary on occasion.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring strict compliance with the parking regulations would be impossible with the existing building on this developed site.

PUBLIC INTEREST: It is staff's opinion that the requested variance would not adversely affect the public interest, as the public has an interest in the redevelopment of residential buildings within older, existing neighborhoods. Likewise, the applicant has considered the surrounding neighborhood association, the Midtown Citizens Association, which discourages paving adjacent properties.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, as the parking requirements of the zoning regulations are not necessary for this redevelopment.

RECOMMENDATION: Should the Board determine that all five conditions necessary to grant the variance exist, then the Secretary recommends that a variance to reduce the parking

requirement to 22 parking spaces for an apartment renovation be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. All parking on the site shall be marked and paved in conformance with City standards.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year from the date the variance is granted unless the Board extends such time.
4. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

Are there any questions of staff on this variance request?

FOSTER Jess you mention the applicant is willing to pay for the pavement, do you mean the full cost of the alley in back or their half share or do you have some idea?

McNEELY As I understand it they are willing to pave the full width of the alley unlike the typical petition where you pay for your half. The applicant is here and you may ask him of his intentions to pave the alleyway.

FOSTER I would hope that the whole alley could be paved because there obviously would traffic coming in from the other end. I am also on the district advisory board and we often have the problem of people paving half of one and creating drainage problems on the other end. May I ask on Topeka is there any problem of parking on Topeka in front of their property?

McNEELY Yes, Topeka is a one-way street and from our observation there is adequate on street parking on Topeka. On this variance request it was sent out to the legal notification surrounding property owners and I did not received any feedback that there was a parking problem in this immediate neighborhood.

RUANE On Topeka, how many cars do you think parks in front?

McNEELY I can easily see a dozen or more cars could be parked on the street in front.

FOSTER Are there any other questions?

RUANE Can you go back to the site plan, does that show in the footprint of the building?

MCNEELY Yes, this is the footprint of the building, it is essentially a backwards C shaped building with the courtyard in the center and you see the landscaping around the front of the building on the west side of the building. And you can see a fountain right here in the center of the courtyard and two trees and then the parking to the rear of the building; it's head in parking to the rear of the building off of the alley way.

RUANE Would it be possible to squeeze any more parking spaces in, the north and south side yard. Is there anyway to provide any more parking stalls that way?

McNEELY As you see in this aerial photograph, the building is built up right to the property line. There is not enough room to have access and park along the north property line. Likewise the neighborhood group or association has been presented with this project and they are opposed of any increase in paving of lots in the immediate area. Parking in the courtyard would not be appropriate contextually with the neighborhood.

RUANE I am trying to exclude the courtyard. I do not understand the site plan if the building the essentially goes from the north and south lot.

McNEELY This is the south line here and the north line there.

RUANE What are the lines of the building?

McNEELY The building is right here and there. If you look at the width of the parking space and the width of the space between the buildings on both north and south property lines, there is not enough room there for width of even a standard parking space.

RUANE So those staircases are located well within the interior of the structure they did not mark the borders.

FOSTER Yes that is interior.

McNEELY I believe the stairways are interior to the building.

FOSTER Are there any other questions?

RUANE What is the depth of the building?

McNEELY About 140, the architect is here for the applicant and he can speak more intelligently about the building. If the depth of the building is 140 then the vast majority of the depth of the lot is being consumed with the building.

GREENLEE In the actual photograph, there is parking down south of the lot, whose parking is that?

McNEELY I believe that is the parking for the neighbor to the south and I believe that is the Grace Med Clinic.

GREENLEE Is that a Clinic west of that parking lot?

McNEELY Yes, I believe the southern neighbor of the applicant is the Grace Med Clinic and this parking right here would be there parking immediately east of their building.

GREENLEE Then you have a lot right across the street for that building just north?

McNEELY Yes.

FOSTER Any other questions? Thank you, Jess. We will now call on the applicant. Please state your name and address.

Mory Breithenthal, I am the architect. My address is 7829 E Rockhill Suite 301 in Wichita. Are there any specific questions?

FOSTER Maybe you want to comment on Ruane's question, whether there is any other possibility of other parking? I have a question, are you in agreements with the conditions proposed by the staff?

BREITHENTHAL Yes, I agree with all 4 conditions and the owner does also. He plans to pave it all the way to the north end. I believe the south end is already paved there.

GREENLEE By paving that alley north then it will help the parking lot ingress and egress. Is that correct?

BREITHENTHAL Yes, It will provide a hard surface driving area for their traffic as well as ours. To answer Mr. Ruane, We explored several opportunities and the site is finite enough that there really is not any other opportunity for more stalls unless we disrupt the courtyard. Our property line and the circulation required and the space for a car, turning radius', backing spaces just do not allow us to because we do not have the ground to do any another scheme that would work.

FOSTER Has this been used for apartments until this recent innovation?

BREITHENTHAL Yes, it has been apartments its whole life.

FOSTER Do you have the opportunity to observed the parking there, at 401 from the previous owner, did the 22 work?

BREITHENTHAL I have been there a dozen times, and the most I found was four cars parked there.

FOSTER This question is being asked because in 1949 I believe there were not as many people who had cars then but more people would have them today. Do we have any question from any other member?

MARKHAM You said you were going to pave the north part of the alley way and you said the south part is already paved?

BREITHENTHAL I believe it is.

MARKHAM So that means, the entire alley for the duration of the block would be paved out?

BREITHENTHAL Yes.

FOSTER We see a gentleman in the audience shaking his head up and down. I take it that he is answering our question that the south end is a paved alley.

Audience Yes sir, I am.

FOSTER Any other questions for the applicant? Is there anybody else to speak to this case? I will confine our discussions to the board.

GRAHAM I would like to move that the board accept the finding of facts set forth in the secretary's report and that all five condition set out in section 2.12.590B as necessary for the granting of the variance have been found and the variance be granted subject to the conditions set out in the secretary's report.

MARKHAM seconded.

FOSTER Graham has moved and Markham has seconded.

RUANE Paving of the alley is a great idea and a nice amenity to the residents, is there an influence that paving of an alley has on the parking?

FOSTER What I am talking about is paving has an influence on the storm drainage. If you pave one end and do not pave the other end, you wash out the dirt. In this case we know that the entire alleyway will be paved. This is a real advantage considering the traffic that will be going both north and south.

RUANE Perhaps, we should add the condition of the full paving the alley for the full 200 feet that located east of the site and north to 11th, because that is what the applicant states they are going to do and that seems to be what everyone wants. Perhaps, the recommendations should conform to that.

FOSTER Jess, has the applicant indicated as part of their application that they will pave this? Would that would tie them down or would it be a better idea to add Mr. Ruane's thought to require paving their portion of the alley.

McNEELY The applicant has indicated that it is their intent to pave the alley. Our secretary's report did not list that as a condition. Normally, as you know, a paving project is done by petition and it is complex and requires the cooperation of the surrounding neighbors. We did not include that as a condition. I could see it with your original question Mr. Ruane. By paving the alley, you are going to make access to the existing parking better. Therefore, the residents will be apt to use the existing parking instead of the on street parking on Topeka Street. I can see where paving the alley would improve the parking situation for the neighborhood. It is really up to the board if you want to make it a condition or not.

FOSTER Well Jess, if we were actually requiring the paving of the alley, my impression would be is all that we could require would be the half paving of the alley in back of the two hundred feet.

McNEELY Yes.

FOSTER They are voluntarily paving the remaining area. Is that correct?

McNEELY Yes.

RUANE I do not wish to impose any extra requirements or expense on the applicant. Even though they intend to pave the alleyway, if the condition is acceptable to the applicant I would request an amendment to incorporate a requirement that the alley be paved behind the site and all the way to 11th because I think that is a better guarantee that all 22 spaces will be used.

FOSTER Do you mind if we required that you pave the alley?

BREITHENTHAL We will agree to have it required in the conditions.

FOSTER The applicant has indicated for the minutes that they agree to the requirement to pave their portion including area to the north of the alley. Mr. Ruane has amended the motion. Is there a second?

FOSTER Do I have the motion to approve the case as proposed with the addition that we include in the conditions the offer of the applicant's offer to pave their portion and the area to the north?

GRAHAM Yes, I move.

MARKHAM Seconded.

RUANE I thank the applicant for voluntarily offering to pave the alley way and for agreeing to allow this to become a requirement.

FOSTER Jess, do you have any questions on the motion?

McNEELY No.

MARKHAM Mr. McNeely, you had a picture of the alley; can you flip back to that?

McNEELY This would be the application area looking north, this is the unpaved portion of the alley.

MARKHAM So that pavement would include all that area in there?

McNEELY Yes.

FOSTER All in favor say Aye.

Motion carried 7-0 unanimously

FOSTER We will go to the next case BZA2006-63

McNEELY Good afternoon Ladies and gentlemen this is a variance to the sign code
BACKGROUND: The applicant requests a variance to increase the number of permitted signs for a business (a medical facility) from one to two. This variance request arises as the applicant is replacing and changing two signs on the site. The site was previously permitted for two signs, the current sign code permits only one sign per business in “GO” General Office zoning of up to 96 square feet for multiple tenants. Because the applicant wishes to identify the same business and tenants on both signs, the applicant is required to seek a variance allowing a second sign for a business. The site is located at a corner; one sign is already permitted on the Maple frontage, the applicant wishes to place another sign on the 135th West frontage.

The application area is located at the northwest corner of Maple and 135th West. The other three corners are zoned “LC” Limited Commercial, and developed with commercial uses (LC zoning permits more signage than GO zoning). West of the site is undeveloped property also zoned GO, and owned by a credit union. North of the site is “SF-5” Single-family Residential zoned property owned by a church, but currently used for agriculture. The proposed sign does not face any residential development.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single-family Residential; Agriculture
SOUTH	“LC” Limited Commercial; Commercial development
EAST	“LC” Limited Commercial; Commercial development
WEST	“GO” General Office; Vacant

The five criteria necessary for approval as they apply to the requested variance.

UNIQUENESS: It is the opinion of staff that this property is unique at this corner location; as the requested second sign for a business is along a heavily traveled arterial street, and the one code permitted sign is along a different arterial street. Likewise, the size of this site is unique in that it could house numerous businesses, and each business would be allowed separate signage within square footage limits.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for an additional sign per business will not adversely affect the rights of adjacent property owners, as no residential properties directly face the proposed sign, and surrounding business properties are permitted more signage than this site.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign code would constitute an unnecessary hardship upon the applicant, as one sign at this corner location would not adequately identify the site on two heavily traveled arterial streets.

PUBLIC INTEREST: It is the opinion of staff that the requested variance for an additional sign per business would not adversely affect the public interest, as the additional sign would serve in the community interest identifying the site to persons arriving from 135th West.

SPIRIT AND INTENT: It is the opinion of staff that granting the requested variance for a second sign per business would not oppose the general spirit and intent of the Sign Code as the signage will make it easier to locate the facility. Likewise, the requested signage is within size limits, and would be permitted by code if it were for a different business than the first sign.

RECOMMENDATION: It is staff's opinion that the requested additional sign would be appropriate at the requested location. Should the Board determine that the conditions necessary to grant the variance exist, it is the Secretary's recommendation that the variance to permit an additional sign per business be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the approval of the variance, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

Are there any questions of staff regarding this request?

FOSTER Is the zoning in the southeast corner of this also LC?

McNEELY The southeast corner of the maple/135th intersection is LC limited commercial zoning.

FOSTER We have 3 corners opposite of this case that are all allowed to have more than one sign.

BLICK On the southeast corner on the slide, what is that?

McNEELY That would be an existing sign if you have been to the site. It is not addressed with this variance. It was permitted by OCI as a face change for an existing permitted sign under the previous owner of this sign. So, there is an existing sign directly at the corner. It is not being addressed under square footage or number of signs under the sign code.

BLICK This would be a third sign?

McNEELY Yes, this is a third sign. But under OCI precedent, it is permitted under a face change. They are not changing out the structure of that sign and not counting that sign against the applicant in that case.

BLICK Okay. Also, is this proposed sign going to be illuminated or not?

- McNEELY I believe the sign is externally illuminated. You can ask the applicant that question because they are going to build it.
- FOSTER May we assume that an illuminated sign will still be approved?
- McNEELY Yes. Everything they are requesting regarding illumination and size is permitted under the sign code. The only thing that is not permitted is the fact that this is a second sign for one business.
- MARKHAM What size is that sign?
- McNEELY I do not have that information. The applicant can answer that question.
- MARKHAM I was wondering if it could be seen to the north since it is on the street.
- McNEELY This sign is visible from the intersection but it is not visible further north on 135th. The intent of the sign that is being requested through the variance is to guide people coming from the north on 135th into the site.
- MARKHAM Thanks.
- FOSTER Any other questions? Thank you, Jess. We will call on the applicant. Please give your name and address.

Michael Bankston, TriMark Signworks, 319 S. Oak, Wichita, KS. 67213. I want to extend apologies from Kay Myrtle who is with Preferred Medical Associates. She wanted to be with us today but was called out of town. I would like to address the reason for the second 96 square foot sign as Preferred Medical Associates has been concerned and has had comments with patients driving up and down 135th street being able to easily identify the clinic. So they asked for the second sign. The point Mr. Blick was asking about that structure in the corner. We do have a drawing of that in our file and I will be glad to disclosed if you like to see a picture or get a sense of the size or the scale of that sign. The reason it was not in our language in our application is that as we worked through this applying for a permit, as Preferred Medical had change logos and what not. We worked with the office of Central Inspection, as this site was problematic because it had too much signage already in a "GO" general office. It had two monument walls with a 32 square foot sign on each end of the driveway. So we were asked to remove both of those signs and the owners of this property, Via Christi, were concerned about this one that is in the corner there. They did not want to tear it down because it ties in so well with the architect and structure of the building. We worked out with Central Inspection to count instead of the monument sign per se, we were able to base on the sign code use 15 inch high identifying letters as how we would apply for a permit and that was approvable. We were also granted an approval of one 96 square foot sign that we have already installed on the west Maple frontage. Then the application for the variance was for one additional 96 square foot sign for the 135th frontage. The illumination question came up. This sign as all of PMA's signage is ground lighted it is not internal illumination. It would be an aluminum-clad sign painted with the graphics that you saw with the doctor's name listed on the side.

- FOSTER Are there any other questions? I know I am being redundant, are you removing the sign on the corner?

BANKTON Yes, the one on the corner here at west Maple and 135th street, the one that Mr. Blick pointed out, that is not being removed. The one on the two driveways, the old Riverside Via Christi signs have been removed at the request of the owners.

FOSTER The one that has Via Christi on it now at the intersection is that being replaced or not?

BANKSTON No, that is not being replaced.

FOSTER So, you will have three signs. Now, I am having a problem because I thought the regulations only allowed for one sign in this zoning and that they were requesting a second one. They already got one at the corner.

McNEELY Just as the agent of the applicant explained, the sign at the corner, that one is a monument sign. OCI has allowed them, during the change of business at this site, to change out that sign as a face change with only 15 inch high letters which are the same letters that you would have unlimited identification on the face of your building. That sign is not counting as one of the 96 square foot business signs on the site. It is counted as a building sign.

FOSTER Shall we call it an identification sign?

McNEELY Yes, it would be the same as a building identification sign, which is limited to the 15-inch high letters. I do not believe any of my pictures captured that particular sign.

FOSTER Did I hear another question, Ms. Dickgrafe?

DICKGRAFE You will see part of the sign if you back up on the slides. They are allowed to put 15-inch letters down on the base, correct me.

McNEELY Where the 15-inch letters are a little above that as I understand it.

DICKGRAFE OCI allowed them switch that sign out so that they would not have to remove that entire wall structure.

McNEELY Yes, I would like to point out, staff was aware of this corner sign. The agent and applicant was very up front with pointing out this corner sign but that is something that needs to be addressed regarding the uniqueness and hardship criteria on this site. From OCI's prospective on a regulatory, permitting and enforcement perspective, that sign at the corner is 15 inch high identification letters, it is not a business sign, in this case not a second business sign such as we are discussing today on this variance. It is something to consider, but it has nothing to do from a regulatory standpoint with the variance we are discussing today.

FOSTER That answers my questions. Are there any more questions of Jess? Are there any more questions of the applicant? Do you have anything else you wish to present? Are you in agreement with the conditions?

BANKSTON Yes, we are in agreements with the conditions.

FOSTER Is there anyone else present to speak to this matter? Seeing none, I will confine the discussions to the board. I will make the observation since Jess is still there, It is one of the jobs of the board of zoning appeals to note things in the regulation that may be logical for change in the future so if this ever came up again. I would hope that "GO" zone might recognize two signs on a corner lot. This is a reasonable request because you cannot see the sign north or west when you approach the intersection. Any discussion with the board? Do I hear a motion?

GREENLEE I move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

MARKHAM Seconded.

FOSTER All in favor say aye.

Motion carries 7-0 unanimously

FOSTER Jess we are ready for the next case BZA2006-64, this is the KU School of Medicine they are requesting two variances in regard to two signs plus an increase of height.

McNEELY Good afternoon, BZA2006-00064 is a variance to the sign code.

BACKGROUND: The applicant is requesting two variances; the first would increase the maximum height of a sign from 20 to 30 feet, the second variance would increase the maximum area of two signs from 48 square feet to 100 and 140 square feet. The signs will replace older building identification signs for the Kansas University School of Medicine (see the attached graphics). The older signs were 15-inch letter identification signs, and therefore were not limited to the 48 square-foot sign limit. The older sign on the south building façade also exceeded the 20-foot maximum height. The proposed sign incorporates the KU logo; it includes letter sizes greater than 15 inches, and therefore requires a variance to be greater than 48 square feet, and greater than 20 feet in height.

North of the site is B zoned offices and parking, south of the site is the I-135 ramp. East of the site is a B zoned medical clinic with associated parking, and west of the site is another portion of the KU Medical School and I-135. No residences in the area face the proposed signs.

ADJACENT ZONING AND LAND USE:

NORTH	"B"	Office, parking
SOUTH	"B"	I-135 ramp

EAST	“B“	Medical, parking
WEST	“B“	Medical, I-135

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the proposed signage is for a three story medical school/hospital, within “B” Multi-family zoning (which restricts signage size), and located at the intersection of an elevated interstate highway and an on-ramp. A site this large could house numerous businesses, and each business would be allowed separate signage within square footage limits.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance for increased sign area and height will not adversely affect the rights of adjacent property owners, as the overall sign size and height will be similar to existing signage. Likewise, the proposed signs do not face any residences.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign code would constitute an unnecessary hardship upon the applicant, as a 48 square foot sign may not be sufficient for visibility from the interstate (490 feet from the building) or the interstate on-ramp (170 feet from the building). Visibility from the interstate is necessary for this facility as many visitors are from outside the immediate neighborhood, and many are from out of town.

PUBLIC INTEREST: It is the opinion of staff that the requested variance for increased sign size and height would not adversely affect the public interest, as the improved medical school/hospital visibility would serve in the community health/safety interest. Likewise, the facility association with Kansas University Medical School, and therefore the KU logo, is a unique part of the immediate neighborhood’s identity.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the requested variance for increased sign size and height would not oppose the general spirit and intent of the Sign Code as the signage will make it easier to locate the medical facility, and the signage size and height is within reasonable limits. The “B” Multi-family restriction of sign size to 48 square feet is intended for smaller apartment complexes and medical offices, and does not consider institutions of this size and height with an interstate location.

RECOMMENDATION: It is staff’s opinion that the requested sign size and height increase would be appropriate for identification of a medical school/hospital facility on a large site adjacent to an interstate highway. Should the Board determine that conditions necessary to the granting of the variance exist, then the Secretary recommends that the variance to permit a 140 square foot sign at a 30 foot maximum height, and a 100 square foot sign be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.

3. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

Are there any questions of staff in regards to this case?

FOSTER Thank you Jess, are there any KU Graduates here that want to disqualify themselves from this case? There are none that want to disqualify. Are there any questions for staff? No questions Jess, you done your job well. I will call on the applicant. Please give your name and address.

Carrie Kerr, with Trimark Signworks, 319 S. Oak Street, Wichita KS 67213.

FOSTER Do we have any questions? I have a question of the architect. I need some education. What is a “set”?

KERR Well we call these channel letters so when we have more than one we just call them a set of letters. My lingo may be different but it there is more than more than one I call it a set.

FOSTER Is this the regular terminology I should expect in these matters?

KERR Possibly.

FOSTER I need one more education. It has FAB as initials. What’s a FAB?

KERR FAB stands for fabricate, it is fabrication condense down into the abbreviated form.

FOSTER Thank you for the education. Any questions? Do you agree to the conditions that are listed?

KERR Yes, we do.

FOSTER Is there anyone else to speak on this case?

KERR Brian Lebo could not be here so it is just I.

FOSTER Seeing no one else here, we will confine the discussion to the Board. I know that I pass this site several times a week. There is no affect in any direction on this signs with the park to the south residence a block away.

FOSTER Is there any discussion on it? Do I heard a motion?

MARKHAM I move that the board accept the finding of facts as set forth in the secretary’s report and that all five conditions set out in Section 2-2.12.590B of the City Code as necessary for the granting of the variance have been found to exist and that the variance be granted subject to condition set out in the secretary’s report.

BLICK Seconded.

FOSTER All in favor say aye

Motion carries 7-0 unanimously

FOSTER We are ready now for case BZA2006-65 and this is a variance to reduce parking requirements for a neighborhood swimming pool from 18 to 9 spaces and to permit parking in the front area.

McNEELY Good afternoon, we will now hear case BZA2006-65.

BACKGROUND: The applicant proposes to construct a neighborhood swimming pool for a single-family residential development within a platted reserve. The reserve detention pond limits the space available for the swimming pool and associated parking (see the attached site plan). The swimming pool is proposed to be 1,800 square feet in area, a playground is also proposed. Section of IV-A.4 of the Unified Zoning Code (UZY) requires that neighborhood swimming pools provide one parking space for each 100 feet of pool area, or 18 parking spaces for this project. Given the space constraints and projected parking need, the applicant proposes to provide only nine parking spaces. A variance is required to reduce the parking requirement for the proposed neighborhood swimming pool by more than 10 percent. The applicant also proposes that the parking area be located within the front setback, three feet from the property line, also requiring a variance. The applicant has submitted the attached written statement to justify the requested variances.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single-family residential
SOUTH	“SF-5” Open space reserve
EAST	“SF-5” Open space reserve
WEST	“SF-5” Single-family residential

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It is staff’s opinion that this property is unique as the swimming pool is within pedestrian access of most residences in this development, users can easily walk to the pool, reducing the parking need. Likewise, the site is unique in that within the larger platted reserve, the size of the detention pond limits available space for the pool, playground, and parking.

ADJACENT PROPERTY: It is the opinion of staff that granting the requested variances will not adversely affect the rights of adjacent property owners, as the pool is for the surrounding property owners. Additionally, sufficient on-street parking space will be available for occasional overflow parking situations.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, as requiring compliance with the UZY parking requirements would prohibit development of the proposed pool and playground amenities.

PUBLIC INTEREST: It is staff's opinion that the requested variances would not adversely affect the public interest, as the public has an interest in common open space within neighborhoods, and excessive paved parking does not serve the public or neighborhood interest.

SPIRIT AND INTENT: It is the opinion of staff that granting the requested variances would not oppose the general spirit and intent of the zoning regulations, as the parking requirements of the zoning regulations are not necessary in this case. The parking demand for this site can be met with the proposed nine spaces.

RECOMMENDATION: Should the Board determine that all five conditions necessary to grant the variances exist, the Secretary recommends that variances to reduce the parking requirement for a neighborhood swimming pool from 18 to 9 spaces and to permit parking within the front setback, within three feet of the property line, be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The applicant shall submit a landscape plan for this site, to be approved by planning staff, conforming to the Landscape Ordinance.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year from the date the variance is granted unless such time is extended by the Board.
4. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

Are there any questions of staff in regard to this case?

FOSTER Thank you, Jess. Do I understand, that this is the specific standard for neighborhood pools?

McNEELY Yes, the specific standard for neighborhood pools is 1 per 100 square feet of the pool. As I pointed out before, the next update to the Unified Zoning Code we desire to reduce that requirement as we have found it excessive. None of the new neighborhood pools being built in subdivisions can comply with that.

FOSTER I remember two cases where we were to reduce them. Is this a CUP or a plain plat?

McNEELY This is not a CUP. It is a residential plat in SF-5 zoning.

FOSTER Okay, any other questions?

BLICK Approximately how many homes are going to be using this pool?

McNEELY That is a good question the agent of the applicant may be able to answer that better, usually it around 100.

- BLICK Within this hundred, are most of them going to walk to this pool instead of driving to the pool? Or is it because it on this exterior instead of being centrally located is they more than likely going to drive to it more?
- MCNEELY I think people's transportation habits vary on an individual basis. It is the intent of providing neighborhood pools within residential subdivisions that they would be easily accessible by pedestrians. This entire residential subdivision that exists north of 21st and on the west side of 127th would have easy access to this site as pedestrians. I do not think any of the residences are greater than a quarter of a mile away. From planning standards a quarter mile is the distance that you plan that people are willing to walk to a site. Does that answer your question?
- BLICK Yes it does.
- FOSTER As a reserve does this indicate that they plan to put a swimming pool there, does it say recreational equipment?
- McNEELY Is this conditional use or is it platted? Okay, I prefer that you ask the applicant how they went about having approval for a swimming pool.
- FOSTER Am I correct as related to Mr. Blick's point, looking at the drawing from Woodridge to 127th street there would appear to be no lots that would have access to Mainsgate on that south side, in other words for 10 lots, there would be one side of the street has no housing.
- MC NEELY Yes, exactly there is the cul de sac that terminates into Maingate that I believe is Daven Circle, and then Woodridge; there are no homes so there will not be any driveways there.
- FOSTER So, ten lots could open up or maybe fifteen more parking spaces on that south side?
- MCNEELY Yes.
- FOSTER Any other questions for Jess? We will call on the applicant, please give your name and address.

Russ Ewy with Baughman Company, 315 Ellis, Wichita KS, with me also is the developer of Ritchie Associates who own this property as Fairmont LLC. To give you a little further background on this application site as mention in your report. It is part of a reserved that was platted solely for the purpose of storm water drainage detention and utilities. This subdivision in particular at its inception never intended to have a neighborhood swimming pool or playground of this type. Last spring, the homeowner's association area requested from the applicant, that they embark on the approval process of this type of facility. Several months were spent with engineers looking at how much property in this reserve can be reclaimed for this type of use. And while working with the City and their drainage experts, it was resolved to be able to build into the reserved to the level we show here. You can see there are slight contour modifications,

Page 17

we are not encroaching on the ability of the existing pond to detain the storm that it was design to detain. There are going to be some slight modification to the grading of these two locations. You can tell that without being able to come in and fill part of the pond in. It created a unique situation at this particular property to be able to provide the 18 required spaces. At this point, the adjacent properties are all owned by the developer. Any future buyers of those homes are going to have the ability to step through the door and purchase this property with the understanding that this particular use will be here. Regarding the requested variance of the parking lot being in the front setback, I will note that there will be 18 feet minimum between the back of curb and back of curb and there will be plantings per the landscape ordinance in this location here, this three feet. This is only a reduction of the front setback of approximately 60 feet. You can see we are not encroaching in the remainder of the frontage. Also, I want to point out there is property that remains in the county in the north that is owned by Ritchie Associates in some form and most likely continue the pattern of urban development that we see here in this area. Everyone who is aware of their products in this neighborhood understands that Ritchie Associates builds very quality neighborhoods. They are very adept at meeting these neighborhood needs and this will be one of several neighborhood pools they have developed that will be successful. I will answer any questions. We are in agreement with staff's comments.

FOSTER Do you recall whether the two lots to the west have put up fences?

EWY It is undeveloped at this point.

FOSTER They may want to put up fencing there.

EWY Correct.

RUANE Can you show us the number of dwelling units that will have access to this pool and where they are located?

EWY It is going to be hard because this aerial is the extent of the Planning Department exhibit. This is very close to the south line of the Fairmont Addition it extends to the edge of the screen. This road wraps around back into this road here and extends here. I believe there are around 180 and 210 residential lots that are currently platted for development. The number of those that are developed, I am unsure of right now. There are sidewalks that will tie this into this area.

RUANE For pedestrians?

EWY Correct.

RUANE Are the houses within a quarter of a mile near this pool?

EWY Yes, sir.

RUANE The multi-family tract at the south.

EWY It had been a high-density patio home area.

RUANE So around 180 homes will be service by this pool?

EWY Correct.

FOSTER Do I understand that this came about by request from the homeowner's association. The people are not there yet how can there be request from the homeowner's association?

EWY That is incorrect. There is a homeowner association established. There are homes out here, people in our office that live in this area. After a certain point, the homeowner association takes over the development from the development. They are not quite at that point but a percentage of the development has been developed. There is a homeowners association established.

FOSTER The homeowner's association has assumed this responsibility and asked the developer to build this? Is that correct?

EWY I will let Mr. Ramshire with Ritchie Associates answer that question.

FOSTER And the homeowner association will assume the responsibility of this?

RAMSHIRE Yes. I am Rob Ramshire with Ritchie Association, 8100 E 22nd Street N, Wichita. The way this came about. Our on location sales people who are our employees were approached by a number of homeowners with an interest of putting a pool in. So they circulated an informal petition and we deemed it was sufficient interest to come up with a design with Baughman's help for the space available and also to put it to a vote of all the lot owners. The development when that went out was half done. The development is 50 % complete with 50% of the lots sold to individual homeowners. We own the balance of them. We got the design done and went to a formal vote per the covenant. There is a homeowner association that we still operate and we will until the development is 70 to 90 % complete. We draw up a letter did a formal vote and it passed overwhelmingly. That is the history on that and it did start at the bequest of the homeowners.

FOSTER And the homeowner association members will assume the responsibility for that?

RAMSHIRE Yes the homeowner association will assume the responsibility for the ownership and maintenance of this facility.

FOSTER Are there any houses built to the north of this or across the street yet?

RAMSHIRE No, there are no streets constructed yet, the sewer is in but the streets are not completed.

FOSTER If and when they decide to build there they will know the pool is there?

RAMSHIRE Absolutely. Not only to the north but to the West also.

FOSTER Any other questions?

BLICK Does the neighborhood go past the east of 127th street?

RAMSHIRE No. We stop at 127th.

BLICK So we are looking at everything to the west.

RAMSHIRE We put in the parking lots usually per the code and in this case we do not have the room and hopefully you will approved are request if for no other reason but for that reason. I have not done a scientific study but when you drive by the parking lot in these subdivisions, it will be rare to see more than 4 –6 cars at any given time in the parking lots. Rocky Creek for example has 18 parking spots, the location of the pool is towards the north end, not in the middle of the development and I cannot tell you any time where I've seen more than 4 or 5 cars in that parking lot.

FOSTER Are there any sidewalks on either side of Mainsgate?

RAMSHIRE Yes, there will be a sidewalk on one side or the other but right now I do not know which side that will be. City code requires a sidewalk on one side or the other.

FOSTER You may want to put it on the side of the swimming pool.

BLICK Is the playground in place right now?

RAMSHIRE No. The site looks right now like the pictures.

BLICK In Rocky Creek, do they also have a play ground?

RAMSHIRE Yes, they do have a playground.

FOSTER Any other questions?

EWY You asked about the platted reserve. The platted reserve does not identify this as a permitted use within that reserve. We are going through our third step. We had approval 13-0 for our conditional use permit. We are seeking unanimous support for this set of variances. We will be going back to the subdivision committee along with MAPC to vacate the platters text of reserve B Fairmont Addition to include recreational facilities as a permitted use within the reserve. We are going through the tri-fecta of regulatory review.

FOSTER You are touching all the bases.

EWY Yes sir.

MARKHAM Is it just a pool or will a clubhouse or building adjacent there with the pool ?

EWY That is a good question that is a piece of the planning dept review on parking standards. To specifically answer your question, no there will not be a clubhouse facility on site there will simply be a swimming pool and the play ground. This being a mechanical room for the pool.

FOSTER Any other questions? Russ, do you agree to the conditions? Is anyone else here to speak on this? I would like to confine the discussion to the board. I would like to make the observation. If this had been a planned neighborhood pool, I

would not have been in favor of it because they did not plan enough area. But on the other hand, this is something that the neighborhood wants. What discussions do you have?

MARKHAM None.

ANTHIMIDES I move that the board accept the finding of facts as set forth in the secretary report and that all five conditions set out in section 2.12.590B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

GREENLEE Second

FOSTER All in favor say Aye

Motion carries 7-0 unanimously

FOSTER We have next Case BZA 2004-00002. Jess, are you ready?

MCNEELY This is a case involving the school that requested a variance requiring landscaping. **BZA2004-02 – Variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front setback, within 5 feet of the property line, on property zoned “SF-5” Single-family Residential. Generally located at the southeast corner of 9th Street North and Armour (706 N. Armour).**

On August 22, 2006, the City of Wichita Board of Zoning Appeals (BZA) moved to hold a hearing in order to review the above case regarding compliance with the conditions of the variance resolution. The BZA may review variance resolutions for compliance with conditions, and make recommendations to staff regarding enforcement. Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on February 24, 2004.

Of specific issue is the variance resolution condition #3, which states: "The parking lot shall be developed in general conformance with the landscape ordinance plus a solid row of conifer trees between the parking area and the street to the maximum extent possible given the site triangle with the overall goal being complete screening to the south by a combination of parking lot screening shrubs and conifer trees." A landscape plan for this site was approved on April 8, 2004; that landscape plan does not include the conifer trees required by the variance resolution. An OCI Inspector confirmed that as of August 24, 2006, required landscaping is not installed on the site.

WHEREAS, Unified School District 259 (Owner); Joe Hoover (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section IV-A.6.a of the Unified Zoning Code to permit parking within the front setback on property zoned “SF-5” Single-family Residential legally described as follows:

Lot 1, Block A, Harris Elementary Addition, Wichita, Sedgwick County, Kansas.
Generally located at the southeast corner of 9th Street North and Armour (706 N.

Armour).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of February 24, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the subject property is developed with an elementary school on a tract that is about one-half the size of a typical elementary school property; therefore, development of the property within all setback requirements is not possible while preserving sufficient open space for a playground.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating needed playground area on the school property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as sufficient separation between the parking lot and the sidewalk will exist so that no detrimental impacts to public health, safety, or welfare should occur.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located across the street from all residences; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section IV-A.6.a of the Unified Zoning Code to permit parking within the front setback on property zoned “SF-5” Single-family Residential legally described as follows:

Lot 1, Block A, Harris Elementary Addition, Wichita, Sedgwick County, Kansas.
Generally located at the southeast corner of 9th Street North and Armour (706 N. Armour).

The variance is hereby GRANTED, subject to the following conditions:

1. The parking lot shall be permitted to encroach into to the front setback along Cresthill but shall not be located closer than five (5) feet from the property line.
2. The parking lot shall be paved and marked in general conformance with the approved site plan.
3. The parking lot shall be developed in general conformance with the landscape ordinance plus a solid row of conifer trees between the parking area and the street to the maximum extent possible given the site triangle with the overall goal being complete screening to the south by a combination of parking lot screening shrubs and conifer trees.
4. The applicant shall obtain all necessary permits, and the improvements to the parking lot shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24th DAY of FEBRUARY, 2004.

It has been verified that the conditions have not been met. The landscape screening submitted to our office was to have evergreen trees planted for required screening. The planning staff would like to report that it was not in conformance during the last meeting and they are now in conformance of the variance resolution requirements. I have shown you all the slides showing all the completed landscaping with the required shrubs and evergreen trees. Are there any questions of staff? There is a representative from the school board and he would like to address this issue with the board.

FOSTER Thank you Jess. Any questions?

RUANE Why the lack of communication with the Planning Department that resulted in the landscaped plan being approved that did not satisfy the variance conditions?

McNEELY That would come down to a timing issue. We have multiple processes within our department. Whether intentionally or not, it would not be hard for someone to have an approved variance with one set of conditions and before that information is updated to our GIS data base our mapping system (there is a 8 to 10 week lag), they could have a separate landscape plan approved. It is very easy and happens on a regular basis for one body to approve a condition and not be updated in time for another regulatory review to conform to another set of conditions, such as what happened in this case. This was approved in February 04, by April

04 the landscape plan, which did not meet the variance resolution, was approved. The planning member who approved that landscape plan was not yet updated as to the fact that this site had a variance on it. That staff member should research to see whether there were any conditions that would have applied to the landscape plan. Generally speaking, 99% of the professionals we deal with, in the way of architects/engineers, want to do what is right in assisting us. There was not any intent to deceive staff with what had been approved in a variance versus what got approved in a landscape plan. I would like to point out in this particular case the end result was a landscape that did in fact met the variance resolution requirements.

RUANE When was the final landscape plan approved?

McNEELY I do not have a date on that final plan. This came in pieces. As I tried to point out, there are time gaps when something gets updated in GIS. So it is easy to slide something in before another staff member could research the database to verify other requirements. I do not believe it was intentional. There have been several incidents between BZA and let's say HPB board where something was approved two different ways. Those of us who work here cross talk with our fellow planners on items and we rely on the professionals that we deal with.

RUANE Doesn't the applicant have responsibility of reporting those changes?

MCNEELY Yes, the property owner does have that responsibility.

RUANE I will ask Joe Hoover about it.

McNEELY The first landscape plan was not correct, the final landscape did get installed which was correct.

RUANE Does the honor system tend to serve us well?

MCNEELY 99.99% of the time, and in dealing with the Wichita School Board they have no intention to deceive staff.

RUANE My request for follow up on USD 259's performance under our honor system was not limited to simply Price Harris but all the other schools that received zoning variances to perform improvements funded by the bond issue.

McNEELY It is on OCI to do the enforcement. Shaner can give you the information on school district compliance.

RUANE Is this the sole example?

McNEELY I do not believe this is the sole example, and I believe Herb can give you the answer.

MARKHAM When you approved the variance and they brought in the landscaping plans, the first one was not right, so they had to go back to the drawing table?

McNEELY Yes.

MARKHAM This case started in 2004?

McNEELY Yes.

FOSTER Any other questions for Jess? Do we have the pleasure of Mr. Hoover who has been looking forward to appearing before us?

JOE HOOVER, School Service Center, 3850 N Hydraulic, 67219.

FOSTER May I ask are you looking forward to the end of this bond issue?

HOOVER We are done with the construction, but we are behind on the parking lots landscaping, fences and things like that. I do want to speak to you to let you know that we had no intention to ever get out of the conditions of that variance. As part of that bond issue, we started back 2000. We have hundreds of projects that affect one of our 16 work areas out there, and that is ground maintenance. Grounds maintenance is responsible for landscaping, for parking lots, playground equipment and for fencing. I do not know the exact number of staff in that department, but it is one of our larger departments, maybe 20 – 25 people. They had hundreds of projects required. Several parking lots, very large parking lots. We try to do many of those things in-house to try to save money. We are paying 15 –16 dollars an hour for our people, if we contract it we will pay 35- 40 dollars an hour. So we try to do everything in-house to be smart with our limited capital budget. We try to do capital projects the very same time that the area is under construction. We did as much as we could to get the parking lot in while it was fenced off and had the kids out of the way. With the limited staff that we had, we could not put in as many parking lots and playground units, landscaping and fencing in as fast as the buildings were being constructed. We had no intention of not completing the variance requirements. I have come before you for more than 15 years and this is the first time I have ever been called back a second time. I hope we never get into a position where you never have to do this to us again.

RUANE It was six weeks after the variance was made.

HOOVER Six weeks after the variance. Also, I find a lot of the architects working on projects are not aware of how far back they need to keep parking lots from the property line. They will draw one and it will show five feet. I can get an administrative adjustment up to 8 feet, if central inspections and planning approve, without going through a variance. But they will draw them five feet and they will show them, and it will be just right or we will catch it on bond review. On this case, there is only a small use, you can see where Cresthill curves around, and we only had to come here for about 25 feet. Except for that 25 feet we could have gotten an administrative adjustment and been back a little bit and been within 8 feet, but that would have made us slide that whole parking lot 25 or 30 feet farther away. So all the parking spots would have been farther away. We are using our land the best we can to use the rest for soccer fields and play grounds. Did I cover everything? Any questions?

FOSTER Do we learn anything from this, from the City and the School?

HOOVER We were overloaded with our budget and we got behind. We never intended to get behind. We never intended to have this happen. I think we are behind on some other things with landscaping. None of it has been installed that is not in conformance with what you are requesting. We do not have very many variances out there either. We may have some landscaping that is not in that was just submitted as part of the project. And it is either an administrative adjustment or we are back 25 feet, but it has not been installed yet because we are behind.

RUANE Joe, were you aware that we brought this particular matter up to OCI and asked that they confer with USD 259 several times over the last couple of years.

HOOVER No, we got a call from a neighbor that was helpful at raising money. They raised substantial money, 4-6 thousand dollars to put those trees in, and additional landscaping, and they are going to put a few other trees in there. They were pushing us to. Another thing related, there is a parking lot to the west here that was not in the original plan. We contracted out, even though it cost us a lot more, when people are getting really upset with us. We will shift money from some other project and put it in this one and defer other projects. Treetop installed this instead of us.

FOSTER Any other questions? We thank you Mr. Hoover.

RUANE I move that the resolution authorizing this variance be null and void. Due to the fact that the OCI inspector confirmed that as of August 24, 2006 the required landscaping had not be installed on that site.

FOSTER Is there a second to that?

MARKHAM I would like Mr. Ruane to explain to me, if it became null and void, what does it mean?

RUANE I defer to Sharon. I will let Jess answer it.

FOSTER The question here is that maybe they should have asked for an extension of time. Isn't that correct Jess?

McNEELY Yes. This variance authorized the parking lot to be within 5 feet of the property line. If this variance resolution were nullified, the parking lot would have to be plowed up and moved a minimum of eight feet from the property line. That would be the requirement. This discussion was held between Sharon, myself, and my boss, Dale Miller. The probability of that construction being taken down is pretty slim. As a matter of fact, it has never been done as far back as the people here for 20 plus years. To revoke a variance resolution, or to nullify in this case, would require the applicant to physically modify the site to be in compliance with the zoning code requirement, as opposed to the reduction

that the variance authorized. As we all know, this parking lot has been built up to 5 feet from the property line.

FOSTER I understand Mr. Ruane's point. What I indicate is that as we have given in the past notice to people and having them come to us on the basis that it could be declared null and void.

RUANE Tthis board has been assured several times that our concerns with regard to this matter have been relayed to USD 259 and that they were going to be acted upon. It is truly the honor system. If an applicant cannot be trusted to comply to the conditions, there is no other enforcement mechanism than for us to revoke the variance. However wasteful that may be.

FOSTER You are saying the time system is not working.

RUANE I do not believe there was any sinister intent or that anyone purposely misled this board.

MCNEELY I would like to point out regarding enforcement, it is important that once a variance is approved, it is a part of the official zoning on that property, and if the conditions of a variance are not met, the OCI Director has the authority to enforce those conditions, just like he has the authority to enforce any zoning issues. So the whole realm of fines or whatever other enforcement that OCI has at it disposal is a possibly in the case of enforcing variance resolutions.

RUANE Are you saying it is true at this point or it has always been true?

MCNEELY It has always been true.

FOSTER Remember the one where they had extended a garage to the edge of his property, that he violated the regulations and was required to remove it.

McNEELY I believe you are talking about the one that was denied, not null or void.

RUANE He had already built a garage without a permit and was given a citation, and he came to us made application to get a variance to keep the building; the case was denied and he was told to tear it down. When we asked OCI to go out and report to us, it was reported that the improvements was still there. Our response was tear it down. Is it still there?

SHANER I have not been there for a year or more.

McNEELY I would like to clarify on enforcement, enforcement is in the realm of the OCI Director. In this case I am sure the OCI supervisor knows that if he contacts the school districts with threats to fine for non-compliance with zoning requirements, they will go ahead and met the variance.

RUANE Herb have you ever given information to us that you made contact with USD 259?

- SHANER I am sure can I can go to my office and pull notes where I talked to Joe and the Landscape architect, and where she said she will get right on it.
- MCNEELY The school board's original variance was for this parking lot. Granted the conditions of the variance, like all of our variances, have the one-year for the conditions to be met unless the time is extended by the BZA. The applicant in this case did not come back within the one-year and request an extension of time, as they should have. The explanation, offered to me, is that after building this parking lot, they then built this one that I am pointing to here. They were waiting until that parking lot was in before they put in all of their landscaping. Logical? Yes. Does it meet the variance resolution? No. The correct thing to do would have been to come back.
- FOSTER Let me ask Jess, the conditions attached says the resolution authorizing you a variance may be declared null and void upon finding by the board that the applicant has failed to comply with any of the foregoing conditions. This is like a court case, literally. I do not differ with Ruane's concerns. I'm concerned about our procedures here; to do this is we have to make findings.
- RUANE My motion proposed a specific finding. If the City Ordinance that conveys us with our limited authority, gave us any legal option other than to ignore this entirely which to be the preference of the board, or to revoke and declare null and void the variance. I would be suggesting that but it is a black or white, yes or no. We either accept or reject the variance. Jess points out that OCI has all different shades of gray that they could use now or that they could have used at any point. None of that was done.
- GREENLEE I think once it was brought to the attention, again maybe the third or fourth time. It was brought into conformity late probably because of the overload on the school board side on what they were doing and how many projects they had going on. I do not think there was any original intent not to do what they had already promised they would do. The waste of money for them to move the parking lot is out of the question. It is not going to happen. For the board to make a motion such as the one suggested is unrealistic. Therefore, I would not vote for it. A notification needs to be sent out in the eleventh month advising them that they need to bring it into conformity or consider it null and void.
- FOSTER About a year or two ago we did have a person that did not know their time was up. They were not notified that their time was almost up. We asked that the forum be changed so that whenever we tell people that they have one year or six months to apply. The reason why that change was made was because of this matter.
- RUANE I do remember that, and I guess it would be unfair to hold the school board to it, because we did change the forum because of the lack of compliance with regard to this project. So they cannot be held responsible for having that notice that the forum change would have made.

MARKHAM The thing is inconsistency. We need to work on the process of enforcement and making sure these people have gotten a letter that the time is nearing to a close. I do not think we should use this case as an example, because we do not have the process. I do not think one case out of a year is wasting my time because we have more successes than failures.

MCNEELY I am aware that OCI, in their enforcement role, has been instructed by this body to look into this matter. It is within this body's realm of influence to instruct staff to consider their enforcement tools. In this particular case, the board was never given a citation or a fine. The next thing would have been to verify whether or not it was in conformance with zoning, and in this case a variance resolution. If not, then we would have gone through procedures first and notified them with threat of a fine. In between there, do nothing and revoke a resolution, maybe enforcement that includes fines. I will let Herb talk about the OCI part separate and apart from the planning process.

BLICK So why was this not done before?

McNEELY Kurt Schroeder administratively made a decision to extend time to the school board, and he has that right. But the applicant has the responsibility to come back and ask for an extension of time.

GREENLEE Well he should have communicated that he gave an extension of time.

McNEELY This body has the right to recommend enforcement by citation and fine. That would have been your recommendation. But Kurt has his administrative prerogative of what procedures he is going to do.

RUANE. I do not care if you vote for or against this resolution. I believe it best that we consider exercising those remedies toward the USD 259.

FOSTER I need to bring it to a close. I am going to ask, is there any second to the motion made?

BLICK Second.

FOSTER You are seconding Mr. Ruane's motion?

BLICK Correct.

FOSTER We now have it on the board to discuss. Mr. Graham?

GRAHAM I am excusing myself from the vote, because of conflict of interest, as I work with the architectural firm that is contracted by USD 259 as master planners of the bond issue projects.

FOSTER We still have six people to vote. We still have a quorum. My concern in this matter is on a motion like that is whether we actually gave notice to the party that this would be the nature of re-asking them to appear to speak on behalf of

their organization. I would have thought we had to give notice that they were coming before the board in regards to their permit being null and void.

BLICK Herb came back to us and reported to us that he notified them. If that is communication to that individual, then that is communication to their organization. So, we contacted them twice and had communication with this applicant.

RUANE It was either at our May or June meeting when the motion was granted to add revocation of this variance to a future agenda. Legal staff advised us that it could not be done until the applicant was provided with notice or opportunity to be heard.

FOSTER The letter sent did not say that that it would automatically be considered. Call the question. All those in favor say aye.

Ruane and Blick

FOSTER All those opposed say nay

Motion 4-2-1 denies resolution from being declared null and void

FOSTER I appreciate this discussion because it helps the members to realize that if they do enforce something, they have a board that backs them up. I want to thank Jess, he had six cases on today and he helped with all the details on this, and I want to show all my appreciation for all his detailed work. Shaner do you have anything to present?

SHANER I do not have any thing to present.

FOSTER Anything for next month?

McNEELY We will have one case for sure next month

FOSTER Motion to adjourn?

MARKHAM Moved

GREENLEE 2nd

Adjourned 4:19

